

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOYCE FLEMING, <i>et al.</i>)	CASE NO. 1:08-cv-01881
)	
Plaintiffs,)	
)	
v.)	MAGISTRATE JUDGE
)	NANCY A VECCHIARELLI
EXPERT RENOVATORS, LLC, <i>et al.</i>)	
)	
Defendants)	DISMISSAL ORDER
)	

On May 15, 2009, the court ordered plaintiffs to show cause by May 21, 2009 why the claims of deceased plaintiff Claudia Fleming should not be dismissed pursuant to Fed. R. Civ. P. 25(a)(1) ("R. 25(a)(1)"). Plaintiffs have failed to respond to the court's order.

Rule 25(a)(1) provides in relevant part as follows:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting death, the action by . . . the decedent must be dismissed.

As the court has already noted, a Notice of Suggestion of Death of plaintiff Claudia Fleming was served and filed on December 9, 2008. (Doc. # 22). Plaintiffs have not filed a motion for substitution of party within 90 days of serving the Notice as required by R. 25(a)(1).

As R. 25(a)(1) allows a court no discretion in deciding whether a party should be dismissed upon failure to file a motion for substitution within 90 days, and as plaintiffs have failed to show cause why Claudia Fleming should not be dismissed, the court hereby

dismisses Claudia Fleming from this action without prejudice.

IT IS SO ORDERED.

s/ Nancy A. Vecchiarelli
NANCY A. VECCHIARELLI
U.S. MAGISTRATE JUDGE

Date: May 28, 2009